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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,428	07/09/2001	Craig M. Whitchouse	840.052.203	8546
4617	7590	10/18/2007	EXAMINER	
LEVIsohn, Berger , LLP			NGUYEN, KIET TUAN	
61 BROADWAY , 32ND FLOOR			ART UNIT	PAPER NUMBER
NEW YORK, NY 10022			2881	
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			10/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/901,428	WHITEHOUSE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kiet T. Nguyen	2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 March 2007 and 30 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 99 and 115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 99 and 115 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

The current application is a continuation of U.S. Patent Application Serial No. 09/676,124 filed on September 29, 2000, which is a continuation of U.S. Patent Application Serial No. 08/694,542 filed on August 09, 1996, ***but not is a continuation of U.S. Patent Applications Serial Nos. 09/373,337, 08/794,970, 08/645,826 and 08/202,505.***

Since, the applications are not copending, the benefit claim to the prior-filed application is improper. Applicant is required to delete the reference to the prior-filed application from the first sentence(s) of the specification, or the application data sheet, depending on where the reference was originally submitted, unless applicant can establish copendency between the applications.

Applicant claimed that this application is a continuation of 09/676,124, ... etc; and is a continuation of 09/808,468, ... etc. Because the subject disclosed in these two applications is not the same, this application is not a continuation (See MPEP 201.07) but a continuation-in-part (See MPEP 201.08). For example, the recitation part (e) of claims 99 and 115 is not found in 09/676,124 or 08/694,542.

Therefore, this application having SN: 09/901,428 is not entitled to the benefit of an earlier filing date under 35 U.S.C. 120 of the U.S. Patent Application Serial No. 09/808,468. Claims 99 and 115 in this application having SN: 09/901,428 have been not considered to be an interference with U.S. Patent No. 6,285,027.

However, if this application is intended to be a continuation of U.S. Patent Application Serial No. 09/808,468, then the claim is untimely according to 37 CFR 1.78. Further, all the specifications of the current application and the continuation applications

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have to have commonly disclosed the same subject matter as recited in claims 99 and 115.

***Objected Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, means for providing a delay between the release of the pulses of trapped ions and initiation of pulses in the Time-Of-Flight instrument and means for adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio as recited in claims 99 and 115 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Rejection Under 35 U.S.C. 112, First Paragraph***

Claims 99 and 115 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification is unclear for reciting the limitations "means for providing a delay between the release of the pulses of trapped ions and initiation of pulses in the Time-Of-Flight instrument" and "means for adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio" as recited in claims 99 and 115.

Therefore, the Examiner don't understand how is the pulse delayed between the release of the pulses of trapped ions and initiation of pulses in the Time-Of-Flight instrument? And what is the device that is used to adjust the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio ?

Additional explanations are needed if applicant insists on including these features in claims 99 and 115 without the introduction of new matter.

***Rejection Under 35 U.S.C. 102(e)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 99 and 115 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Chernushevich et al. (6,285,027) for the reasons above. See claim 1 of patent No. 6,285,027.

Applicant's arguments filed on 03-02-2007 and 07-30-2007 have been fully considered but they are not persuasive in view of the foregoing reasons.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiet T. Nguyen whose telephone number is 571-272-

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2479. The examiner can normally be reached on Monday-Friday from 8.00 AM to 6.00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KIET T. NGUYEN  
PRIMARY EXAMINER